IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE A.GOPAL REDDY
WRIT PETITION NO : 16077 of 2004

Between:

Divisional Electrical Engineer (Operation), Andhra Pradesh Southern Power Distribution Co.Limited, Madhanapalle, Kadapa.

..... PETITIONER

AND

The Assistant Provident Fund Commissioner, Sub Regional Office, 1/30 R.S.Road, Cuddapah-516 004.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or a writ more particularly one in the nature of writ of mandamus, restraining the respondent in giving effect to his proceedings No.AP/CP/43255/ENF/CTR/SRO/CDP/2004-05/5325, dated 12-08-2004

Counsel for the Petitioner: MR.S.RAVINDRANATH

Counsel for the Respondent: MR.R.N.REDDY

The Court at the stage of admission made the following ORDER:

When the writ petition is taken up for admission, the only submission made by learned counsel for the petitioner is that without issuing summons and examining the Contractor, who engaged the employees, the respondent cannot fix up the liability on the principal employer. In view of the law declared by Apex Court in **Food Corporation of India v. Provident Fund Commissioner**[1], which was followed by this Court in W.P.No.24209 of 2003 dated 03.12.2003, hence the assessment order passed under Section 7A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (for short 'the Act') is liable to be set aside.

The learned Standing Counsel contends that issuance of notice to the Contractor does not arise since the employees of the petitioner appeared before the Assistant Provident Fund Commissioner and produced the list of Contractors and wages paid to the employees engaged by the Contractor and basing upon the information furnished with regard to the wages, the dues of Provident Fund have been determined. If the petitioner is aggrieved by the assessment made by the respondent, it is open to it to file an appeal before the Tribunal.

The very fact of issuing notice to Contractor, who engages the employees is to ascertain the contribution on the basis of wages paid, which information available with the petitioner was produced during enquiry.

In view of the same, petitioner is permitted to file an appeal before the Appellate Tribunal within a period of two weeks from today. Since the Appellate Tribunal is not functioning, the writ petition is disposed of, on condition of the petitioner depositing 50% of the amount demanded by the respondent within a period of two months

from the date of receipt of a copy of this order and produce such deposit before the Appellate Tribunal, the Appellate Tribunal without insisting for depositing 75% of the amount for entertaining the appeal, may consider the same. The amount so deposited will be subject to the orders passed in the appeal. On such deposit no coercive steps for due recovery of the amounts shall be taken against the petitioner till the disposal of the appeal. No costs.

A. Gopal Reddy, J

Date: 09.09.2004
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To
1. The Assistant Provident Fund Commissioner, Sub Regional Office, 1/30 R.S.Road, Cuddapah-516 004.
2. Two CD Copies

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[1] 1990 (1) SCC 68